Cooley

FCC Expands Authority in Space Economy With New Orders

October 19, 2023

The Federal Communications Commission (FCC) recently took steps to facilitate commercial operations in space by adopting two orders that provide more flexibility to the industry. The FCC adopted a second report and second further notice of proposed rulemaking (FNRMP) to allocate spectrum for space launch operations and consider spectrum needs for other space-based needs. The agency also recently approved a report and order and FNPRM to modernize the licensing process for satellite and earth stations. Finally, the FCC announced that its Space Bureau will launch a "Transparency Initiative" creating knowledge-based resources to help make the application process easier to understand.

Space launch proceeding

The FCC established new licensing and technical rules for space launch operations to "facilitate growth of the commercial space industry." The FCC adopted a new secondary allocation in the 2025-2110 megahertz (MHz) band that provides spectrum for commercial space operations within the band and removed the restriction on nonfederal space operations within the 2200-2290 MHz band. The FCC declined requests to adopt new allocations for the 420-430 MHz, 2360-2395 MHz and 5650-5925 MHz bands.

To facilitate this process, the FCC created a new part 26 of its rules, which will include the new rules governing commercial space launch services. Licensees will be able to use the 2025-2110 MHz and 2200-2290 MHz bands for telemetry, tracking, and command activities required for space launch operations. Part 26 will outline the limits for authorized bandwidth, licensing requirements, emissions, and power limits. The FCC adopted a post-license grant coordination process facilitated by a third-party space launch frequency coordinator to prevent harmful interference to users of the 2025-2110 MHz and 2200-2290 MHz bands. The FCC adopted a renewal standard that requires commercial space launch licensees to certify that the operations are consistent with the initial application for authorization or that the licensees have complied with the required coordination.

Seeking information on the need for spectrum beyond launch services, the FCC asked for industry comments on the following topics:

- Including new spectrum allocations in specific bands for communications with cargo and crew capsules and payload communications with the International Space Station and other crewed space stations.
- Spectrum needs related to suborbital spaceflight.
- Expanding the use of 2360-2395 MHz band or other bands for commercial space launch.
- Increasing the window for earth station operators to file an application for renewal.

Comments and reply comments for the second FNPRM will be due 30 and 60 days, respectively, after publication in the Federal Register.

Space and earth station licensing proceeding

The FCC significantly revised the space and earth station application process and eliminated unnecessary rules. Specifically, the agency announced the following changes:

- The FCC will not immediately dismiss an application requesting authority to operate a space station "in a frequency band that is not allocated internationally for such operations under the ITU Radio Regulations" if the applicant has requested a waiver.
- Applications in the International Communications Filing System (ICFS) will have new features (e.g., automatic error notifications in Form 312, data entry alerts to misinformation).

- In modification and amendment applications, applicants will have access to pre-filled forms that include information from the current authorization or pending application they seek to change.
- The FCC eliminated the rules that prohibited a licensee or market access grantee from applying for another non-geostationary orbit (NGSO) "license or grant of market access where the party has an already licensed-but-unbuilt NGSO system for the same frequencies," but it retained the limitation on the number of applications per NGSO operator per processing round.
- Applications to add space station points of communication to existing earth station licenses will be deemed granted 35 days after being placed on public notice, as long as certain FCC criteria are met – and no objections to the application are filed.

Additionally, the FCC has established time frames for Space Bureau staff to either place space and earth stations on public notice or notify applicants of any problems with their applications after the applications are filed in ICFS. Earth stations and geostationary orbit (GSO) space station applications will be evaluated under a 30-day timeline, while NGSO space station applications will be evaluated under a 60-day timeline.

The FCC may take additional steps to modernize the application process and has asked for comments on the following:

- Expanding the list of minor modifications allowed without prior FCC authorization.
- Whether operations beyond tracking, telemetry, and command functions should be permitted to continue during satellite drifts if a provider certifies that operations are limited to coordinated transmissions during the relocation and drift transition period.
- Creating an "equivalent to special temporary authority for space station market access grantees to communicate with [US-licensed] earth stations."
- Allowing special temporary authority extensions to be automatically granted while applications are pending.
- The feasibility of a "Permitted List" for NGSO operators similar to that used for GSO satellites.
- Proposals for improvements of interagency coordination of space station and earth station applications.
- Strategies to eliminate duplicative coordination requirements between the National Telecommunications and Information Administration and the FCC.
- Eliminating the rule requiring operators to keep paper copies of electronically filed applications.

Comments and reply comments for the FNPRM will be due 30 and 60 days, respectively, after publication in the Federal Register.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Henry Wendel **Washington, DC**	**hwendel@cooley.com** **+1 202 776 2943**

J.G. Harrington Washington, DC	jgharrington@cooley.com +1 202 776 2818

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.